

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2070 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARGIS NAZIM

Versus

DIRECTOR OF HEALTH & MEDICAL EDUCATION

Appearance:

NOTICE SERVED for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1
RULE SERVED for Respondent No. 3
MR BY MANKAD, AGP for Respondent No.2 State

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. This petition is preferred under Article 226 of the Constitution of India by the petitioner- Dr.(Mrs.) Nargis Nazim who is serving as Medical Officer in Health & Family Welfare Department of the State of Gujarat. On

the date of petition, the petitioner was serving as Medical Officer (Gazetted Class : II) and she was Medical Officer in Urban Leprosy Centre, Govt. Medical College, Surat. According to the petitioner, her right to be promoted in the cadre of Class :I was seriously jeopardized as some junior persons in the Primary Health Centre were promoted to Class :I post. Stating details of her qualifications, experience and seniority, petitioner has prayed that this Court should issue a writ of mandamus to the respondent State and the department concerned praying that a direction should be issued to the respondent authorities to promote the petitioner to the post of District Leprosy Officer (Class:I). She has also prayed that if promotion is given, it should be given with the deemed date with effect from 26.8.1986.

2. Learned counsel Mr. V.H. Bhairavia was representing the case of the petitioner before this Court initially, but on his elevation to the Bench of this Court, the petitioner was served with a notice to make necessary arrangements for engaging another counsel. Notice is served to the petitioner, but the petitioner has remained unrepresented. Today, when matter is called out, nobody appears on behalf of the petitioner. Normally, petition could have been dismissed for want of prosecution, but considering the averments made in the petition and in absence of any resistance by way of affidavit on behalf of the respondents, petition is not dismissed for want of prosecution. However, a query was raised to the learned AGP Mr. Mankad who represents the State Government in the matter and in response thereto, Mr. Mankad has submitted that the petitioner is not entitled to any deemed date. He further submitted that, considering the entire set up and other relevant facts available on record, the department has already issued an order whereby the petitioner has already been promoted to Class:I post. Mr. Mankad, in support of his submission, has produced Government Resolution No.GPHS-1082-8475 (87)-T dated 13.1.1988 issued by Health & Family Welfare Department of the State of Gujarat, which is taken on record, promoting certain officers of the department. In the said resolution, name of the petitioner is shown at the top and it is clear that the petitioner is promoted as Medical Officer, Class:I in the pay-scale of Rs.3000-4500 from the date of taking over the charge. In absence of any cogent submission on behalf of the petitioner, it would not be legal or proper to grant any deemed date to the petitioner so far as her promotion is concerned. It is also important to note that without joining the persons affected as party respondents, no such relief of grant of deemed date can be granted. Mr.

Mankad has rightly submitted that in absence of persons who can be affected in the event of grant of deemed date, this part of the prayer made by the petitioner cannot be granted and no such prayer can be granted without affording an opportunity of hearing to those persons who are likely to be affected and who are not joined as party respondents. Under the circumstances, no writ can be issued granting this part of prayer. Mr. Mankad further submitted that so far as first part of the prayer of the petitioner is concerned viz granting promotion to Class:I post is concerned, in view of the government resolution which is placed on record, this prayer does not survive now and, therefore, the petition has become infructuous and same should be disposed of accordingly.

3. I am in full agreement with the submissions made by learned AGP Mr. Mankad. It is settled legal position that without affording an opportunity of hearing to the person who is likely to be affected, no adverse order can be passed against him. In the present petition, since the petitioner has not joined the persons who are likely to be affected in the event of grant of deemed date of promotion to Class:I post, as party respondents, no prayer to that effect can be granted. Under the circumstances, the first part of the prayer viz. to grant promotion to the petitioner to Class: I post, in view of the government resolution dated 13.1.1988 granting promotion to the petitioner on Class:I post, does not survive. In the result, this petition has become infructuous and requires to be disposed of accordingly.

4. For the reasons aforesaid, this petition stands disposed of as having become infructuous. Rule is discharged. Considering the facts and circumstances of the case, no costs are awarded.

23..6.2000 [C.K. BUCH, J]

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